

U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR

WASHINGTON, D.C.

DATE: JUL 28 1994
CASE NO. 94-ERA-9

IN THE MATTER OF

MAGED GABALLA,
COMPLAINANT,

v.

ARIZONA PUBLIC SERVICE COMPANY,
ARIZONA NUCLEAR POWER PROJECT &
THE ATLANTIC GROUP,
RESPONDENTS.

BEFORE: THE SECRETARY OF LABOR

**FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT**

This case arises under the employee protection provisions of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. IV 1992). The Administrative Law Judge (ALJ) issued a decision recommending that the settlement be approved on June 15, 1994. The parties submitted a Joint Motion for Approval of Settlement Agreement and Dismissal with Prejudice seeking approval of the settlement and dismissal of the complaint. Because the request for approval is based on the agreement entered into by the parties, I must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). Macktal v. Secretary of Labor, 923 F.2d 1150, 1153-54 (5th Cir. 1991); Thompson v. U.S. Dep't of Labor, 885 F.2d 551, 556 (9th Cir. 1989); Fuchko and Yunker v. Georgia Power Co., Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23, 1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. See ¶¶ 2.1, 2.2, 2.3, 2.4. For the reasons set forth in Poulos v. Ambassador Fuel Oil Co., Inc., Case No. 86-CAA-1, Sec. Ord., Nov. 2, 1987, slip op. at 2, I have limited my review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of the Complainant's allegations the Respondent violated the ERA.

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Paragraph 1.6 preserves Complainant's right to pursue other claims against The Atlantic Group (TAG), regarding blacklisting of, or discrimination against, the Complainant by TAG with employers other than the Arizona Public Service Company, the Arizona Nuclear Power Project, and/or at sites other than at Palo Verde Nuclear Generating Station.

Section III provides that the parties shall maintain the "strictest of confidence" concerning the agreement, with certain specific exceptions. Section IV provides that the agreement does not prohibit or restrict the Complainant from reporting or providing information to any Federal or state governmental agency.

Although the parties have designated the documents in this case as confidential and commercial information, and the ALJ has issued an order requiring predisclosure notification in that regard, the parties' submissions, comprised of the agreement and attachments, become part of the record of the case and the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988), requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.¹ See Debose v. Carolina Power & Light Co., Case No. 92-ERA-14, Ord. Disapproving Settlement and Remanding Case, Feb 7, 1994, slip op. at 2-3 and cases there cited.

Section VII provides that the agreement will be governed by the laws of Arizona, excepting that the authority of the Secretary of Labor and any Federal court shall be governed in all respects by the laws and regulations of the United States. See Phillips v. Citizens Ass'n for Sound Energy, Case No. 91-ERA-25, Final Ord. of Dismissal, Nov. 4, 1991, slip op. at 2.

I find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, I APPROVE the agreement and DISMISS THE COMPLAINT

WITH PREJUDICE. Paragraph 1.1.

SO ORDERED.

ROBERT REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

¹Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential and commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h).